IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) NO.316 OF 2006

State of Goa ... Applicant

versus

1. Ganadhish Keni
   r/o Goa University,
   Taleigao Ilhas Goa,
   Native of Savarcotto,
   H. No. 1736, Cuncolim,
   Salcete Goa.

2. Shantaram Phal
   r/o Goa University,
   Taleigao, Ilhas Goa.
   F-2, Above Dr. Thaly
   Hospital, St. Cruz,
   Native Cansogi Desaivado
   Sadassivga Karwar.

3. Rajesh P. Dessai,
   r/o Near Ganapati Temple,
   Nanangadda Karwar,
   Uttar Kannada Karwar,
   Karnataka.

4. Dr. Ulhas Parab
   Goa University, Taleigao
   Plateau. Native of
   Ambeshiwado, Amona,
   Sanquelim Goa.

5. Shri Vinayak Kamat
Goa University,
Taleigao Ilhas Goa.
F-4 Kamat Nagar Heliodoro
Salgado Road, Panaji. ... Respondents

Mrs. Winnie Coutinho, Public Prosecutor for the Applicant.

Mr. S. G. Bhobe, Advocate for the Respondent No.1.

CORAM : N. A. BRITTO, J.

DATE : 10TH JANUARY, 2007.

ORAL ORDER

Heard the learned Public Prosecutor Ms. Winnie Coutinho, on behalf of the applicant, and the learned Counsel Mr. S. G. Bhobe on behalf of the respondent no.1.

2. Having failed twice to secure an order framing a charge against respondent no.1(i.e. A-1 in C. C. No.73/99/A), first by Order dated 20-3-2003 of the learned J.M.F.C. and then by Order dated 6-2-2006 of the learned Additional Sessions Judge, Panaji, the State of Goa has assailed the said two orders

in this petition filed under Section 482 of the Code(Code of Criminal Procedure, 1973).

3. The Respondent No.1 along with four others came to be prosecuted in the said case, on the allegation that between April and July, 1995 they hatched a criminal conspiracy and substituted the original answer books and supplements of respondent no.3/Rajesh Dessai as well as his mark list, who had appeared for the final examination in M.A.(Sociology) held in that year and forged the signatures of the examiners and invigilators on the said answer books and cheated the Goa University and attempted to declare the said failed respondent no.3 Rajesh Dessai as passed and also used the forged documents as genuine by inflating the marks of the said Rajesh Dessai in the mark list and thereby committed offences punishable under Sections 120-B, 417, 465, 468 and 471 I.P.C.

4. There is no dispute that it is the respondent no.1 who detected the fraud at the time of entering the marks on the Marks Register of the paper C-6 and other two papers as well, that the marks on the answer books were inflated as compared to

the mark list sent by the concerned examiners and after having noticed the same he promptly reported the matter to his immediate superior, namely Superintendent Shri Golatkar and the Assistant Registrar(Exams) Shri V. J. Kamat(respondent no.5) as well as to the Chairman of the Board of Examiners Shri S. R. Phal(respondent no.2) and later to one of the concerned examiners Shri Alito Sequeira and the latter ensured that the result of the said respondent no.3 was withheld. It appears that at the relevant time, the M.A. Examination Section of the University, had M. R. Gawas as the inward Clerk, the respondent no.1 Shri Keni as a L.D.C., Ms. B. N. Mahale as the U.D.C., Shri Golatkar as the Office Superintendent. Respondent Shi V. J. Kamat was the Assistant Registrar(Exam), respondent no.2 Shantaram Phal was the Reader in Sociology/Chairman of Board of Examiners and respondent no.4 Dr. Parab was the Controller of Examinations and the latter from 26-7-1995 onwards was acting as the Registrar of the University in the absence of the regular incumbent.

5. After the fraud was detected, the University appointed a two Members Committee headed by Shri Mahale to look into it

and the said Committee after holding an inquiry came to a prima facie conclusion that there was substitution of answer books, forgery and collusion between the concerned candidate Shri Rajesh Dessai(respondent no.3) on one hand and the employees and the faculty members of the said Department on the other hand, and suggested that a departmental/judicial inquiry be held, preferably headed by a retired High Court Judge. Consequently, Dr. Gustavo Filipe Couto, a retired Judge of this Court, came to be appointed who by his report dated 4-4-1996 recommended, inter alia, institution of criminal proceedings as well as disciplinary proceedings against respondent no.2 Shri S. R. Phal, respondent no.3 Shri Rajesh Dessai, respondent no.4 Dr. Ulhas Parab and respondent no.5 Shri V. J. Kamat.

6. Admittedly, no prosecution nor disciplinary action was recommended by Dr. Couto against respondent no.1 Shri Keni. Pursuant to the said recommendations of the One-Man Inquiry Committee of Dr. Couto, the Registrar of the University filed his complaint against the four respondents and again without showing respondent no.1 as a suspected accused. In

fact, the Registrar, Professor K. M. Mathew, showed the name of respondent no.1 in the list of witnesses.

7. The learned Additional Sessions Judge in Order dated 6-2-2006 has noted that the name of respondent no.1 did not figure in the complaint filed by Professor K. M. Mathew and that even after going through the statements of the witnesses and more particularly of Shri Golatkar to whom respondent no.1 informed about the said discrepancies first, both of them had contacted respondent no.5 Shri V. J. Kamat, the Assistant Registrar, along with the answer books and mark list pertaining to respondent no.3 Rajesh Dessai and he was advised to enter the marks as per the mark list. The learned Additional Sessions Judge also noted that although it was apparent from the statement of Dr. Arun Heblekar that the sealed envelopes containing the answer books cannot be opened by the Clerk unless specific permission is given by his superiors, it appeared that Shri Golatkar who was the next superior Officer of respondent no.1 did not make any grievance regarding the subject matter after respondent no.1 brought the discrepancies of marks to his notice and that was after respondent no.1 had

opened the sealed answer books. The learned Additional Sessions Judge, as regards the allegation that respondent no.1 had opened the parcel containing answer books unauthorizedly, observed that in case respondent no.1 had violated any of the rules and conditions of the University they ought to have filed disciplinary proceedings against him which aspect was lacking and only because respondent no.1 had opened the sealed parcel containing the answer books without the so-called authorization from his superiors it would not be justified to say that respondent no.1 had conspired with other respondents in committing the crimes. The learned Additional Sessions Judge accepted the submission, and in my view rightly, which was made before the learned Additional Sessions Judge as well as before this Court that in case that respondent no.1 was part of this conspiracy he would never have brought the discrepancy to the notice of his superiors and would have preferred to keep silent. Respondent No.1 also alerted Prof. Alito Sequeira, the internal examiner, about the fraud.

8. The only submission made before this Court by the learned Public Prosecutor is that the fact that respondent no.1

Shri Keni, who admittedly was the dealing hand in the M. A. Examination Section, opened the answer books from a sealed envelope without the authority of his superiors and that proves that he was actually involved in the conspiracy. On the other hand, the learned Counsel on behalf of the accused has submitted that respondent no.1 would not have informed about the discrepancy of the marks which were found inflated on the answer books than those appearing on the mark list to his superiors including the examiner Professor Sequeira in case he was involved. The learned Counsel has further submitted that the complaint filed by the Registrar shows that respondent no.1 was cited as a witness and not only that the One-Man Inquiry Committee of Dr. Couto as well as the Inquiry Authority had appreciated the prompt action taken by respondent no.1 to bring the fraud to the notice of his superiors. The learned Counsel on behalf of the accused has also submitted that in case respondent no.1 was not supposed to open the parcel containing the answer books even then till date no action has been taken against respondent no.1. It is also submitted on behalf of the accused that respondent no.1 has been prosecuted as an accused so as to

shut out the evidence to be given by him since nobody is seriously interested in prosecuting the other respondents.

9. It is rather difficult to understand, as to why the prosecution is doggedly trying to prosecute respondent no.1 as one of the conspirators in the fraud. The One-Man Inquiry Committee headed by Mr. Justice(Retired) Dr. Couto had this to say as regards respondent no.1:-

> "With commendable alertness and diligence promptly reported the matter to his immediate superior namely S. K. Golatkar (Exams), V. J. Kamat as well as to the Chairman of the Board of Examiners S. R. Phal and to the concerned examiner Alito Sequeira, who, on examining the relevant papers, found that the answer book/script in question was not bearing his signature ..." etc.
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> "However, the person of the L.D.C. Keni is to be excluded forthwith, for his conduct in the matter unmistakably gives him a clean sheet and conclusively proves that he was not at all involved in the fraud and had not participated in the conspiracy at hand. In fact, had not been for his keenness,

> alertness and integrity, the fraud committed by the said Rajesh with active connivance of the aforesaid personnel of the said University would have gone undetected and unnoticed and the conspirators would have succeeded in their illegal designs. Golatkar too, is similarly to be excluded for the discrepancy being brought to his notice, he immediately reported it to his immediate superior, the Assistant Registrar Kamat".

10. After the recommendations of Dr. Couto, it appears that the Executive Council of Goa University, as Disciplinary Authority, appointed Dr. Alvaro Noronha Ferreira, a retired District Judge, as the Inquiry Officer to conduct disciplinary inquiry against respondent nos.2, 4 and 5 and the said Inquiry Officer had this to say as regards respondent no.1 Shri Keni who was examined as a witness in the said inquiry:-

> "Before we part with the matter I would like to have a word of praise to PW17/Keni and PW16/Prof. Alito Sequeira. Was it not for the courage of Shri Keni to point out the discrepancies in the marks to his superiors and maintain his

> firm stand throughout the grilling cross-examination he had to undergo and was it not for the insistent of Shri Alito Sequeira in demanding a thorough investigation into the matter, the whole sordid affair would not have come to light".

11. As already stated, the Registrar of the University who filed the complaint pursuant to the recommendations of the Committee headed by Dr. Couto showed respondent no.1 as a possible witness. It appears that at one stage the investigating agency sought sanction for prosecution of the Respondent No.1 and the Executive Council of the University had refused to grant any sanction stating that:

> "The sanction is refused in respect of prosecution of Shri G. V. Keni as the material placed before the University does not disclose even prima facie case of prosecution of Shri G. V. Keni".

12. The question before the Court is not whether the inquiry report of Dr. Couto, produced at the instance of the accused, could be relied upon or not at the stage of framing of

charge against the accused. In fact, the learned Public Prosecutor was asked time and again to show material on record which would justify the framing of charge against respondent no.1 independently of the said report but I must hasten to add that the learned Public Prosecutor has not been able to show any material on record to justify the framing of charge against respondent no.1 with or without the aid of the said report. The learned Additional Sessions Judge was fully justified in observing that the prosecution ought to have produced the said report because the said report was referred to in the complaint. In fact, the complaint of the Registrar was based on the inquiry report submitted by Dr. Couto and therefore it was certainly expected of the prosecution to have furnished a copy of the said report to all the accused along with the complaint filed by the Registrar. However, the controversy does not end there. If the respondent no.1 was the witness in the disciplinary inquiry held against the respondents Shri Phal, Dr. Parab and Shri Kamat, one fails to understand as to why he could not be a witness of the prosecution in the criminal trial as well, and, it does appear that respondent no.1 is sought to be made an accused so that ultimately the case ends with no evidence at all against all the

accused and in this view of the matter the submission made on behalf of the accused that respondent no.1 is made an accused so that the other accused go scot free appears to have some substance. An Investigation Officer should be wise enough to know as who are the actual accused in the crime and with what evidence he would prove the crime committed by them. Although, the answer books/mark list in respect of each of the papers were sent by the examiners addressed to the Controller of Examinations(i.e. Respondent No.4) it is nobody's case that it is he who would personally open such parcels or envelopes. The submission of the learned Public Prosecutor earlier reproduced in para 8 hereinabove, is probably based on an earlier opinion given by the Director of Prosecution, opining that respondent no.1 Shri Keni had opened the sealed envelopes containing the answer papers which as per the procedure of the Goa University could not have been opened by him without the permission of the higher Officers. However, it is relevant to note that it is not the case of Shri Golatkar, the Office Superintendent the next immediate superior of Shri Keny that it is he who always opened the answer books/mark list as and when they came from the examiners concerned. Similarly, it is also not the case of

prosecution that Shri Kamat, the Assistant Registrar(Exams) or for that matter Shri Phal, the Reader in the Department of Sociology were authorized to open the sealed envelopes sent by the Examiners addressed to the Controller of Examinations. It does appear that Respondent No.1 as the dealing hand was opening such sealed envelopes with implied consent of his superiors so that the marks as per marks list were entered on the Marks Register of the University. It is quite probable that the parcel/envelopes containing the answer books, if sent separately, of the mark list, would remain unopened unless an application for re-verification or revaluation of marks was received and only then that they were required to be opened in order to verify the same. There is material on record to suggest that at times "the envelopes with mark sheet(list) would come inside the envelopes containing the answer books" which means that at other times they would come separately. It is nobody's case that in the case at hand the answer books and the mark list of paper C-6 or other papers were dispatched separately. If that was the case then the only job of respondent no.1 would have been to copy the marks from the mark list on the mark register without touching the envelope containing the answer books. In

fact, the learned Public Prosecutor has not been able to show any material on record to suggest that the answer books and the mark list dispatched by the concerned examiners were received separately. If that had been the case then one could contend that respondent no.1 had no authority to open the envelope/parcel containing the answer books of the paper C-6 and other two papers. However, the very complaint filed by the Registrar shows that the envelopes sent were sealed and contained the respective mark list as well as the assessed answer books and these were addressed to the Controller of Examination and were received by registered post and the said envelopes sent by two of the external examiners, namely Dr. Fazelbhoy and Dr. Ganesh were received on 26-6-1995 and 28-6-1995 respectively while the envelope sent by the internal examiner Professor Sequeira was also received in the examination section. It is therefore obvious that in order to enter the marks on the mark list the respondent no.1 had to open the sealed envelope which had both the answer books and the mark list and it does appear that he was opening the sealed envelopes routinely as a dealing hand with the implied consent of his superiors with a view to enter the marks on the marks

register and it is at this time that he noticed that there was inflation of marks on the answer books as compared to the marks seen on the mark list sent by the said examiners. In this view of the matter, there was nothing suspicious in the conduct of respondent no.1 in opening the envelope containing the answer books which also had the mark list so as to complete the Marks Register. For this reason respondent no.1 was given a clean chit not only by the Inquiry Committee of Dr. Couto but also subsequent Inquiry Authority of Dr. Ferreira as well as by the Executive Council of the University.

13. In my opinion, considering the facts of the case, the conclusions arrived at by both the Courts below could not be faulted. Further, considering the overall facts of the case this is a fit case to dismiss the petition by imposing costs of Rs.5000/- to be paid by the applicant to respondent no.1.

14. The incident leading to filing of the charge-sheet against the respondents took place more than a decade back and till date the trial has not commenced. The learned trial Court is hereby directed to complete the trial as expeditiously as possible

by following the provisions of Section 309 of the Code and in any event within a period of one year from the date of receipt of the copy of this order. Petition dismissed.

N. A. BRITTO, J.

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